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NINTH JUDICIAL CIRCUIT
ORANGE AND OSCEOLA COUNTY, FLORIDA

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September 2, 2014

Sheriff Jerry L. Demings
Orange County Sheriff's Office
2500 West Colonial Drive
Orlando, Florida 32804

Mr. *[Signature]* RECEIVED
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Office of the Sheriff
Orange County Sheriff's Office
Professional Standards Division

Dear Sheriff Demings:

This letter details my review of the April 22, 2014, incident wherein Deputy Robert K. Baker engaged in a use of force that included the discharge of his agency firearm. This review is undertaken to determine whether or not criminal charges are an appropriate response to the use of force in this instance. This state's highest court has—in at least one instance—affirmed the criminal conviction of a law enforcement officer for what was deemed an unlawful use of force. *See State v. Cobb*, 376 So.2d 230, 232 (Fla. 1979). However, the appellate court directly governing the Ninth Judicial Circuit has questioned whether criminal charges are ever appropriate against a law enforcement officer who exercises his or her judgment in difficult and dangerous circumstances. *See State v. Kadet*, 455 So.2d 389, 390–91 (Fla. 5th DCA 1984). The issue in these instances is whether the law enforcement officer's use of deadly force was justified because he or she reasonably believed that force was necessary to prevent imminent death or great bodily harm to himself or another. Fla. Stat. § 776.012(1)(2012). A comprehensive look at the facts of this incident results in the conclusion that Deputy Robert K. Baker's use of force was justified and appropriate in this instance.

On July 9, 2014, the State Attorney's Office received a Use of Force Case Investigation Report authored by Detective Corporal John Nutting of the Orange County Sheriff's Office. A thorough review was conducted of this document and all other attachments/supporting documents and recordings forwarded by Detective Corporal John Nutting. The following observations were noted during this review:

On April 22, 2014, Orange County Sheriff's Narcotics Unit was conducting an undercover narcotics investigation in the Lowe's parking lot located at 12200 Lake Underhill Road. A known suspect, Ereka D. Hill arrived in a green pick-up truck, which was being driven by the registered owner, Shontell Scott McCauley. Upon their arrival, suspect Hill entered into the undercover vehicle to meet with Agent Samer Herro. Once the drug transaction was completed, a predetermined signal was given by the undercover agent to the take down team.

The emergency red and blue lights were activated on all take down vehicles as they approached. Agent Marco Ruiz was driving an unmarked van during the take down, accompanied by Corporal Robert K. Baker, in front passenger seat and Agent Troy Martin, in the back passenger area. Agent Ruiz activated the van's emergency lights and "chirped" the air horn one time, while making contact with the rear of the suspect's vehicle."

Corporal Baker immediately exited the van and approached the passenger side door on foot. He observed suspect McCauley brandish a handgun and fire a single round in his direction. Corporal Baker instantly returned fire, while momentum carried him backwards and downwards to the ground. Within seconds, suspect McCauley surrendered, by dropping his firearm and raising his hands above his head. He was taken into custody without further incident by other agents on scene. Later in a sworn statement,

McCauley stated, "first thing I think is somebody out here to Kill me" ... "I didn't think, I didn't look, just pow, by that time 'Sheriff', 'Police'. I dropped it" ... "I'm not trying to shoot at no officer."

In a written statement by Corporal Baker, he states, "I approached McCauley's truck near the passenger window and verbally announced my presence by repeatedly saying "police". As I stepped next to the passenger window I saw McCauley raise a handgun, point it at me, and fire at least one round at me. I was approximately 6-8 feet from McCauley when he shot at me. McCauley's actions put me in fear for my life and that of my teammates."

Based on the evidence provided, Corporal Baker was acting in the performance of his official duties and he verbally identified himself as law enforcement. His agency badge and the word "Sheriff" were clearly visible on the chest and back area of his uniform.

Corporal Baker appeared to have a well founded fear that the suspect was attempting to shoot him. The actions of Corporal Baker to protect his life appear to be justified. Neither McCauley nor Corporal Baker were injured during the exchange of gun fire.

Although there is no evidence in this instance indicating the use of poor judgment by the officer, it is instructive here and in all instances to note the words of our appellate court when reviewing law enforcement uses of force:

As an observation, we question whether a law enforcement officer should ever be, in the absence of intentional misconduct or some degree of malice, criminally responsible for using poor judgment. A police officer, under the circumstances here, is ordered into a life threatening situation. The call usually comes without warning. He does not ask for the assignment, but he is bound to protect society against the violent acts of the unlawful or mentally deranged. Now that same society seeks to punish him for using poor judgment. An officer, in such circumstances, should not be burdened with the knowledge that if he overreacts to the real or imagined dangers he may be committing a crime, especially when those who judge his actions do so with the benefit of perfect hindsight and from a position of safety.

Kadet, 455 So.2d at 390-91 (emphasis in original).

There is no evidence in this instance that Deputy Robert K. Baker committed intentional misconduct or acted with any degree of malice. To the contrary, the evidence suggested he acted in self defense with force he believed reasonably necessary to prevent imminent death or great bodily harm to himself or fellow officers. Therefore, a complete review of the investigation leads me to conclude that criminal charges against Deputy Robert K. Baker are not warranted, and the Office of the State Attorney's review of this incident is complete.

Sincerely,


Linda Drane Burdick

LDB:amz

CC: John D. Nutting, Orange County Sheriff's Office

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